

AO 440 (Rev. 10/93) Summons in a Civil Action - SDNY WEB 4/99

United States District Court

SOUTHERN

DISTRICT OF

NEW YORK

CARAVAN, LTD.

SUMMONS IN A CIVIL CASE

V.

CASE NUMBER
08 CV 5395

DANA KAY, INC. and J.C. PENNEY CO., INC.,

JUDGE BAER

TO: (Name and address of defendant)

DANA KAY
1400 Broadway
New York, NY 10018

J.C. PENNEY CO., INC.
Queens Center
92-59 59th Avenue
Elmhurst, NY 11373

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

PROFETA & EISENSTEIN
14 Wall Street, 22nd Floor
New York, New York 10005-2101
(212) 577-6500

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

JUN 13 2008

CLERK

DATE

Catherine Lapsey

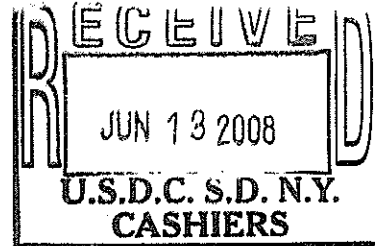
(BY) DEPUTY CLERK

JUDGE BAER

Jethro M. Eisenstein (JE 6848)
PROFETA & EISENSTEIN
14 Wall Street, 22nd Floor
New York, New York 10005
Tel. No.: (212) 577-6500
Fax No.: (212) 577-6702

Attorneys for Plaintiff

08 CV 5395



CARAVAN, LTD.

Docket No.:

Plaintiff,

COMPLAINT

-against-

DANA KAY, INC., and J.C. PENNEY CO.,
INC., ,

Plaintiff Caravan, Ltd., by its attorneys, Profeta & Eisenstein, as and for its complaint, states as follows upon information and belief:

PARTIES, JURISDICTION AND VENUE

1. This action arises under the Copyright Laws of the United States, as hereinafter more fully appears. Jurisdiction is conferred upon this Court by 28 U.S.C. 1338.

2. Plaintiff Caravan, Ltd. ("Caravan") is a corporation duly organized and existing under the laws of the State of California with a place of business at 1384

Broadway, New York, New York, within the Southern District of New York.

3. Defendant Dana Kay, Inc. ("Dana Kay") is a corporation duly organized and existing under the laws of the State of New York, which is a manufacturer, importer and distributor of women's garments and which maintains a place of business at 1400 Broadway, New York, New York 10018, within the Southern District of New York.

4. Defendant J.C. Penney Co., Inc. ("Penney") is a corporation duly organized and existing under the laws of the State of Delaware which is a nationwide retailer of goods, including women's garments, and which maintains a place of business within the State of New York.

5. Venue in this District is proper pursuant to 28 U.S.C. 1391(b) in that a substantial part of the events giving rise to the claim occurred in the Southern District of New York.

STATEMENT OF THE CLAIM

6. Plaintiff is a textile printer and converter. In 2006, plaintiff created an original fabric design that it designated as D# 76632.

7. The said fabric design was and is copyrightable subject matter under the laws of the United States.

8. At all times since 2006, plaintiff has been the owner of the copyright in the design designated D# 76632.

9. At all times since 2006, plaintiff has been, and still is, the sole rightful printer and converter of greige goods and other material bearing the copyrighted design entitled D# 76632, and has had and still has the exclusive right to sell such textiles.

10. Pursuant to such sole and exclusive right, plaintiff commenced prior to January 1, 2006, and has since continued, to print and convert greige goods into printed textiles for wearing apparel and other purposes bearing imprints of the said copyrighted design.

11. Prior to February 14, 2008, in compliance with the copyright laws of the United States, plaintiff filed an application for copyright of its original fabric design designated D# 76632, and secured the exclusive rights and privileges in and to the copyright of the said design, and received from the Register of Copyrights certification of registration VAu 957-053, effective February 14, 2008. Supplementary Registration VAu 756-045 to correct a typographical error on VAu 957-053 was effective May 20,

2008. Copies of the certificates of registration are attached as Exhibit 1.

12. On February 14, 2007, defendant Dana Kay purchased from plaintiff a sample of plaintiff's fabric printed with the copyrighted design designated D# 76632.

13. At a time unknown to plaintiff, prior to May 11, 2008, defendant Dana Kay arranged for the production of textiles printed with a design substantially identical to plaintiff's copyrighted design designated D# 76632 ("the knockoff fabric"). Defendant Dana Kay produced or arranged for production of garments made from the knockoff fabric and sold and continues to sell such garments to defendant Penney.

14. Prior to May 11, 2008, defendant Penney began selling at retail garments produced by defendant Dana Kay made from the knockoff fabric.

15. Defendants had and have no license or other form of permission to copy or use copies of plaintiff's copyrighted design D# 76632.

16. The aforesaid acts of defendants in manufacturing, causing to be manufactured, selling and offering for sale, garments made from fabric printed with a design copied from plaintiff's copyrighted design

designated D# 76632 constitute infringement of plaintiff's copyright.

17. The aforesaid acts of defendants in manufacturing, causing to be manufactured, selling and offering for sale, garments made from fabric printed with a design copied from plaintiff's copyrighted design designated D# 76632 are in derogation of and injurious to plaintiff's exclusive rights as author of the aforesaid copyrighted design and as owner of the copyright therein, all to the damage of plaintiff in violation of Section 106 of the Copyright Act of 1976, 17 U.S.C. §106 as amended.

18. By reason of the foregoing acts of copyright infringement by defendants, plaintiff has been damaged in an amount to be determined at trial.

19. By reason of the foregoing acts of copyright infringement of defendants, plaintiff has suffered irreparable injury.

WHEREFORE, plaintiff demands that defendants

(a) be enjoined from manufacturing, causing to be manufactured, selling and offering for sale garments made from fabric printed with a design copied from plaintiff's copyrighted design designated D# 76632;

(b) be required to pay to plaintiff damages in an amount to be determined at trial, which plaintiff has

sustained in consequence of defendants' infringement of the said copyright;

(c) be required to account for all gains, profits and advantages derived by defendants through their infringement of plaintiff's copyright;

(d) be required to pay such other damages as to the Court shall appear proper within the provisions of the copyright statute; and

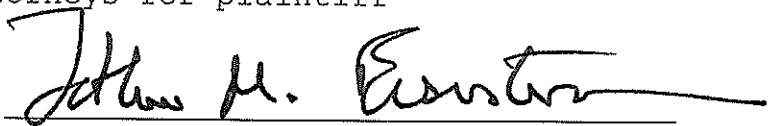
(e) be required to pay to plaintiff the costs of this action and reasonable attorneys' fees to be allowed to plaintiff by the Court.

Dated: New York, New York
June 12, 2008

Respectfully submitted,

PROFETA & EISENSTEIN
Attorneys for plaintiff

By:

A handwritten signature in black ink, appearing to read "Jethro M. Eisenstein", written over a horizontal line.

Jethro M. Eisenstein
A Member of the Firm
14 Wall Street, 22nd Floor
New York, New York 10005

EXHIBIT 1

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

THREE
* *

Registration Number:

VAu 957-053

Effective date of
registration:

February 14, 2008

Title

Title of Work: D# 76632

Nature of Work: FABRIC DESIGN

Completion/Publication

Year of Completion: 2008

Author

Author: CARAVAN LTD.

Author Created: Design on sheetlike material

Work made for hire: Yes

Domiciled in: United States

Anonymous: No

Pseudonymous: No

Copyright claimant

Copyright Claimant: CARAVAN LTD.

1620-B So. Los Angeles St., LOS ANGELES, CA 90021

Limitation of copyright claim

Previously registered: No

Certification

Name: HERSEL NEMAN

Date: January 17, 2008

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America



Form CA

For Supplementary Registration
UNITED STATES COPYRIGHT OFFICE

REGI

VAU 756-045



TX TXU PA PAU VA VAU SR SRU RE
EFFECTIVE DATE OF SUPPLEMENTARY REGISTRATION

MAY 20 2008
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

Title of Work ▼

D#76632

Registration Number of the Basic Registration ▼

VAU957-053

Year of Basic Registration ▼

2008

Name(s) of Author(s) ▼

CARAVAN LTD.

Name(s) of Copyright Claimant(s) ▼

CARAVAN LTD.

Location and Nature of Incorrect Information in Basic Registration ▼

Line Number **3a**

Line Heading or Description

Year in which creation of this work was completed.

Incorrect Information as It Appears in Basic Registration ▼

2008

Corrected Information ▼

2006

Explanation of Correction ▼

Due to an error in our office, the typo was not discovered before filing.

Location and Nature of Information in Basic Registration to be Amplified ▼

Line Number

Line Heading or Description

Amplified Information and Explanation of Information ▼

MORE ON BACK ►

- Complete all applicable spaces (D-G) on the reverse side of this page
- See detailed instructions. - Sign the form at Space F.

DO NOT WRITE HERE

Page 1 of 1 pages

FORM CA RECEIVED

FORM CA

5/20/08
FUNDS RECEIVED DATE

EXAMINED BY *[Signature]*

CORRESPONDENCE ☐

REFERENCE TO THIS REGISTRATION ADDED TO
BASIC REGISTRATION ☒ YES ☐ NO

FOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

Continuation of: ☐ Part B or ☐ Part C

Correspondence: Give name and address to which correspondence about this application should be sent.

Caravan Ltd.
1620-B So. Los Angeles Street
Los Angeles, CA 90015

Phone (213 748-1010) Fax (213 748-5555) Email

Deposit Account: If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name

Account Number

Certification* I, the undersigned, hereby certify that I am the: (Check only one)

☐ author ☒ owner of exclusive right(s)
☐ other copyright claimant ☐ duly authorized agent of

Name of author or other copyright claimant, or owner of exclusive right(s) *

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name *Hersel Neman*

Date *May 12, 2008*

Handwritten signature (X) *[Signature]*

Certificate
will be
mailed in
window
envelope
to this
address:

CARAVAN LTD.

Number/Street/Apt
1620-B So. Los Angeles Street
City/State/ZIP
Los Angeles, CA 90015

YOU MUST

- Complete all necessary spaces
- Sign your application in Space F

SEND ALL ELEMENTS
IN THE SAME PACKAGE

1. Application form
2. Nonrefundable filing fee in check or money order payable to Register of Copyrights

MAIL TO:

Library of Congress
Copyright Office
101 Independence Avenue SE
Washington, DC 20540-5003

*17 USC 508(a): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 408, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.